HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.61 OF 2003.

1. Maharashtra State Electricity Board,]
MUMBAI.]
2. The Director Personnel, MSEB,]
3. The Chief Engineer, MSEB]
4. Senior System Officer (EDP), MSEB] ..Appellants.

Versus.

1. Vilas Kisan Nehete, Opp. Piyush Autho,]
Kingane (E), Vithalwadi, Pune-411051.]
]
2. Mahesh Madhukar Abhankar,]
RB/II/540/I, Central Railway,]
Quarters Pvt. Road, Pune- 411 001.]
]
3. Jayprakash Radhyesham Soni,]
Bldg, No.3, Type-3, Quarter No.14,]
MSEB Colony, Ashoknagar, Pune- 411 007.]
]
4. Madhav Gangaram Acharekar,]
E/1/5, MSEB Colony, Ashoknagar,]
Rane Hill Corner, Pune- 411 007.]
]
5. Prakash Rajaram Kadge,]
E/1/6A, MSEB Colony, Ashoknagar,]
Rane Hill Corner, Pune- 411 007.]
]
6. Anant Vinayak Thosar, C/o:]
A.D.Mhalas, I-2, Kothari Blocks,]
Nirant Society, Bibvewadi, Pune-37.]
]
7. The Learned Member,]
Industrial court, Pune.] ..Respondents.

Mr. Prashant P. Chavan i/b Little & Company for the appellants.

Mr. M.S.Puranik for the respondent No.6.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: APRIL 15, 2005.

ORAL JUDGMENT (Per S.B.MHASE,J.)

1. This Letters Patent Appeal is directed against the judgment and order of the learned Single Judge passed in Writ Petition No. 5530 of 2002 on 8th October 2002 whereby the said writ petition was rejected summarily.

2. The brief facts in the present matter are:

. That, the Respondents have filed Complaints bearing (ULP) Nos.11 to 16 of 1992 before the Industrial Court, Pune under Section 28 of the Maharashtra Recognised Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Since all these complaints involved a common question of law, common judgment was delivered by the Member, Industrial Court, Pune on 30th January 1997. The Appellant - Maharashtra State Electricity Board (Hereinafer, in short referred to as "MSEB") and its Officers were the respondents in the said complaints. They all were represented by Advocate (Dr.) Ghanekar. However, Advocate (Dr.) Ghanekar remained absent at the time of hearing of these complaints, and therefore these complaints were proceeded by the Member, Industrial Court, Pune, ex-parte thereby the directions were given by the Member, Industrial Court, as reflected from the said common judgment and order passed in the aforestated complaints.

. Since these matters were decided ex-parte, the Appellant - MSEB had filed Miscellaneous Applications bearing (ULP) Nos. 7 to 12 of 1997 to set aside the common order passed in the above-referred complaints. The ground for setting aside the ex-parte order was that the Advocate (Dr.) Ghanekar has joined the judicial services, and that this fact was not informed to the MSEB, and resultantly the MSEB could not make the arrangement of another lawyer and has failed to attend the proceedings. The MSEB, therefore, prayed for setting aside the said order. These applications were heard on merit and the Member, Industrial Court, Pune by its judgment and order dated 25th July 2002 dismissed all these applications by a common judgment.

. Since the ULP complaints were decided by the common judgment and equally the subsequent applications for setting aside the ex-parte orders were decided by a common judgment, the appellant- MSEB filed a writ petition bearing Writ Petition No. 5530 of 2002 challenging both the common judgments passed by the learned Member, Industrial Court, Pune. By the said Writ Petition, the writ was sought for setting aside the common Judgment and order passed in Miscellaneous Applications (ULP) Nos. 7 to 12 of 1997) whereby the prayer for setting aside the ex-parte order in Complaint ULP Nos.11 to 16 of 1992 was rejected. The writ

of certiorari was also sought on the merits of the case to the effect that the order passed in Complaint (ULP) Nos. 11 to 16 of 1992 referred to above, shall be quashed. The learned Single Judge by the above-referred order has rejected the said writ petition in limine. The appellants have therefore preferred the present LPA.

2. It is very surprising to note that when it was an admitted fact that Advocate (Dr.) Ghanekar has joined the judicial services during the pendency of the ULP Complaints, the Industrial Court refused to take cognizance of the said fact and refused to set aside the order passed in ULP complaints. Instead the court entered into an area that the particulars in respect of the joining the Judicial Services by Dr.Ghaenkar, etc., have not been brought on record. The Industrial Court lost the sight of the fact that, in Paragraph No.13 of the judgment which was sought to be set aside by these applications, it has been specifically stated that Dr.Ghanekar has joined judicial services and thereafter the MSEB has failed to attend the matters. This shows that during the pendency of the (original) ULP Complaints, Advocate (Dr.) Ghanekar joined judicial services and it may be probably lapse on the part of Dr.Ghanekar not to inform the MSEB so that the MSEB could take steps to engage another lawyer. In fact, when this was a known fact to the court, as reflected from the

paragraph No.13, it was the duty of the court to issue a notice to the present appellants pointing out that their Advocate has joined judicial services and calling upon them to make necessary arrangement for engaging the Advocate on their behalf. All these aspects have been overlooked by the Member, Industrial Court and the learned Single Judge was swayed away by the observations made by the Industrial Court. We find that the MSEB is absolutely at no fault in not remaining present on the date of hearing and participating in the proceedings, since they were under the impression that they have engaged their lawyer (Advocate Dr.Ghanekar), who will participate in the proceedings, and if required, he will call upon the concerned Officer.

3. One more aspect requires to be pointed out that MSEB is a public body and when courts are dealing with such public authorities, court should secure the presence of some responsible officer or someone authorised to represent such public authority. It is well-known that in matters of public body, there are several persons interested who otherwise put spokes in the machinery so as to get ex-parte orders in favour of the particular party. Therefore, the courts are under the obligation to see that some Officer or counsel attends the matter on behalf of such public body especially when Court desires to proceed ex-parte. More specifically, in the facts and circumstances of the present

case, when Advocate (Dr.) Ghanekar representing the MSEB has become a judicial Officer, the Court was under the obligation to bring to the notice of the said authority that it is necessary for them to engage another lawyer to conduct the proceedings.

4. What we find that this is a case of miscarriage of justice. Though technically it can be said that in spite of service nobody is present, still on proper scrutiny it would have been found that there was sufficient cause for not remaining present at the time of hearing. In fact, when the Miscellaneous Applications were filed and the cause was shown, it was not properly appreciated and erroneously these applications were rejected. In the facts and circumstances of the case, the order passed by the learned Single Judge confirming the order passed by the Member, Industrial Court rejecting the Misc. Applications (ULP) Nos. 7 to 12 of 1997 are not proper and requires to be set aside. We accordingly allow the Letters Patent Appeal.

5. We make it clear that we have accepted a prayer of the appellant to set aside the order passed in Misc. Applications (ULP) No. 7 to 12 of 1997, having found that the Advocate for the appellant was not present, however, we have not entered into the merits of the matter. All

questions pertaining to the merits of the case have been kept open to be dealt with by the Member, Industrial Court.

6. We, therefore, pass the following order.

O R D E R.

(1) Letters Patent Appeal is allowed.

(2) The order dated 8th October 2002 passed by the learned Single Judge in Writ Petition No. 5530 of 2002 is hereby quashed and set aside. Equally, the judgment and order dated 25th July 2002 passed by the Member, Industrial Court in Miscellaneous Application (ULP) Nos. 7 to 12 of 1997 is hereby quashed and set aside.

(3) The Miscellaneous Application (UL Nos. 7 to 12 of 1997 are hereby allowed and the order passed by the Member, Industrial Court dated 30.1.1997 is set aside and the Complaint (ULP) Nos. 11 to 16 of 1992 are hereby restored to its original file. The matters shall be dealt with by the Member, Industrial Court on its own merits after hearing both sides, equally giving an

opportunity to both sides to lead evidence, if so desired.

(4) Since the matter is pending for pretty long time, we further direct that the Member, Industrial Court shall dispose of the matters on its own merits within a period of four months from the date of receipt of writ form this court

(5) In view of the disposal of the Letters Patent Appeal, Civil Application Nos. 97 of 2003 and 246 of 2003 do not survive. They are accordingly disposed of.

(6) Parties are directed to obtain an authenticated copy of this order and produce the same before the Industrial Court within four weeks.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

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